

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

SCOTT PATRICK SWEDLOW,) Case No.: 1:22-cv-0011 JLT SKO
)
Plaintiff,) ORDER GRANTING PLAINTIFF'S MOTION TO
) DISMISS AND DISMISSING THE ACTION
) WITHOUT PREJUDICE
)
v.) (Docs. 10, 11)
)
DEPARTMENT OF THE TREASURY and)
INTERNAL REVENUE SERVICE,)
)
Defendants.)
)

Scott Patrick Swedlow asserts the Department of the Treasury and Internal Revenue Service failed to issue a stimulus payment to which he was entitled under the Coronavirus Aid, Relief, and Economic Security Act. (Doc. 9.) The magistrate judge noted the deadline for payments was December 31, 2020, and no additional funds may be issued. (Doc. 10 at 3, 5.) As a result, the magistrate judge found that “Plaintiff cannot establish he is entitled to the relief he seeks pursuant to the CARES Act.” (*Id.* at 5.) The magistrate judge also noted Plaintiff failed to allege he filed a claim with the IRS—as required to bring a suit against the Government for a tax credit payment—despite the Court informing him of the jurisdictional requirement. (*Id.*) Thus, the magistrate judge recommended the First Amended Complaint be dismissed without leave to amend on April 5, 2022. (*Id.* at 5-6.) Plaintiff was granted 21 days to file any objections to the Findings and Recommendations. (*Id.* at 6.)

On April 18, 2022, Plaintiff filed document entitled “Motion to Dismiss,” asserting he does not “wish to contest this issue” and requesting that the Court dismiss the action. (Doc. 11 at 1.) Pursuant

1 to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure, “the plaintiff may dismiss an action
2 without a court order by filing ... a notice of dismissal before the opposing party serves either an
3 answer or a motion for summary judgment.” The Court construes Plaintiff’s motion to dismiss as a
4 request under Rule 41(a), as the defendants were not yet served and have not appeared to file an
5 answer or motion for summary judgment. As a result, Plaintiff’s request terminates the matter. *Id.*;
6 *see also Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997). Based upon the foregoing, the
7 Court **ORDERS**:

- 8 1. Plaintiff’s motion to dismiss (Doc. 11) is **GRANTED**.
- 9 2. The Findings and Recommendations issued on April 5, 2022 (Doc. 11) are terminated.
- 10 3. This action is **DISMISSED** without prejudice.
- 11 4. The Clerk of Court is directed to close this action.

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13 IT IS SO ORDERED.

14 Dated: April 21, 2022


15 UNITED STATES DISTRICT JUDGE

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